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EXAMINER

REICHLER, K

ART UNIT

PAPER NUMBER

6

33N1/1007

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3308

DATE MAILED:
10/07/94

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☒ Responsive to communication filed on 7-11-94 ☒ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), — days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|---|
| 1. <input checked="" type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-948. |
| 3. <input checked="" type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. | 4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____ |

Part II SUMMARY OF ACTION

1. ☒ Claims 1 and 3-19 are pending in the application.
Of the above, claims _____ are withdrawn from consideration.
2. ☒ Claims 2-3 have been cancelled.
3. ☐ Claims _____ are allowed.
4. ☒ Claims 1 and 3-19 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ Claims _____ are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).
12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

Art Unit 3308

The drawings are objected to under 37 CFR 1.83(a) for the reasons set forth on page 2, lines 7-11 of the last Office Action. This also applies to the invention as shown in claims 12-14 now too, i.e. no flaps shown, from which claim 15 depends.

Claims 8-15 and 17 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 10, Applicant refers to third and fourth lines of weakness. However, first and second lines of weakness have not been claimed. This also applies to claim 11, i.e. symmetry. In regard to claim 15, positive antecedent basis for "the garment" and "the undergarment" should be defined. In regard to claims 8 and 17, again Applicant refers to second and/or third discontinuous lines. However, a first "discontinuous" line has not been claimed.

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102

Art Unit 3308

of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1 and 3-11 and 16-19 are rejected under 35 U.S.C.

§ 103 as being unpatentable over Buell '959 in view of Glassman and Sneller.

In regard to claims 1, 3-8, 10-11 and 16-17, the Buell '959 device includes all the claimed structure except for the core having a line or lines of weakness. However, see Figure 6, 23B and 23C, Figure 28, col. 6, lines 23-24, col. 8, lines 5-32, col. 13, lines 8-28, col. 16, lines 44-53, col. 17, lines 15-19, col. 18, lines 20-30 and 51-61, col. 26, lines 59-66. Sneller, paragraph bridging pages 18 and 19 and Glassman, see, e.g. abstract and col. 5, lines 6-11, teach channels or interchangeably spot depression, i.e. discrete sites, to create a weakened area that enhances controlled bunching. To employ lines of weakness, i.e. discrete sites, as taught by Sneller and Glassman on the Buell device would be obvious to one of ordinary skill in the art in view of the recognition that such a feature would enhance the mimicking of the configurations of the deformation element by the core, i.e. controlled bunching, and the desirability of such on the Buell device. In regard to claim 9. Applicant claims V-shaped lines of weakness. However, on page 13, lines 13-17, Applicant does not disclose the criticality

Art Unit 3308

thereof. See *In re Cole*, 140 USPQ 230, *In re Kuhle*, 188 USPQ 7. Therefore, it would have been obvious matter of design choice to modify the Buell device by having V-shaped lines of weakness since it has not been disclosed that having such lines of weakness solves any stated problem or is for any particular purpose and it appears that the core would perform equally well, see, e.g., Figures 14, 18, 19. In regard to claim 18, Applicant claims discrete sites are bilaterally staggered about said line of weakness. See Figures 1 and 3, Figures 2 and 4, Figure 9, Figures 5 and Figure 8 of Glassman. To employ discrete sites bilaterally staggered about the line of weakness as taught by Glassman on the Buell device would be obvious to one of ordinary skill in the art in view of the recognition that such would provide more softness than non-staggered continuous sites. In regard to claim 19, see col. 8, lines 8-17 and 20-24, i.e. the inner perimeter region doesn't have to correspond to protuberance 71, i.e. lines of weakness 23C. Applicant claims discrete sites join the topsheet and core and having a lesser density than the discrete sites forming the line of weakness. However, Glassman shows continuous lines and lines formed by discrete spots are interchangeable. Furthermore, Applicant does not disclose the criticality of lower density sites on page 10, lines 19-20. See case law citations, *supra*. To make continuous region 47 of Buell discrete sites instead would be obvious to one of ordinary skill

Art Unit 3308

in the art in view of the interchangeability as taught by Glassman. Furthermore, it would have been obvious matter of design choice to modify the Buell device by having lower density sites since it has not been disclosed that having such density solves stated problem or is for any particular purpose and it appears that the core would perform equally well.

Claims 12-15 are rejected under 35 U.S.C. § 103 as being unpatentable over Buell '959, Glassman and Sneller as applied to claim 11 above, and further in view of M^c Nair.

See cited portions of Buell '959, Glassman and Sneller and also see, e.g., col. 21, line 33 - col. 22, line 24. Also, see col. 1, lines 13-19 and 35-42, Figure 3 and col. 3, lines 32-43 of M^c Nair. To employ flaps as taught by M^c Nair on the Buell device would be obvious to one of ordinary skill in the art in view of the recognition that such would permit the absorbent pad to remain in contact with the wearer, further prevent movement from the desired location and allows more complete absorption of fluids preventing staining and the desirability of contact, maintenance of position and complete absorption on Buell. It should be noted that Applicant does not claim how the sides of the backsheet and flaps relate to the longitudinal side margins, i.e. Applicant does not claim the side edges of the backsheet define the longitudinal edges of the sanitary napkin. Since the flaps are part of the napkin and the free ends form part of the

Art Unit 3308

longitudinal edges, the flaps are joined at the opposite ends to backsheet inboard of the longitudinal side edges of the napkins, i.e. free ends, as claimed. Also, Applicant should note lack of criticality of point of joining in the instant disclosure at page 8, lines 15-17.

In regard to Applicant's remarks on page 4, lines 1-16, such remarks have been considered but either the objections and/or rejections have not been repeated or have not been overcome.

In regard to Applicant's remarks on page 3, lines 3 et seq and page 4, last paragraph, such remarks have been considered but are deemed nonpersuasive because Applicant has not argued the rejection as put forth by Examiner, i.e. Buell, Glassman and Sneller. Furthermore, Applicant's remarks are narrower than the teachings of the prior art and case law, see rejection supra.

Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM

Serial No. 122,114

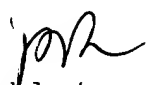
-7-


Art Unit 3308

THE DATE OF THIS FINAL ACTION.

See change in dependency of claims 4-6 and amendments to claims 8 and 17.

Any inquiry concerning this communication should be directed to K. Reichle at telephone number (703) 308-2617.


K.Reichle/pw
September 28, 1994
Fax: 703-305-3590


RANDALL L. GREEN
SPE
ART UNIT 338